Supreme Court, U.S.
FILED
02 465 SEP 17 2002
OFFICE OF THE CLERK

No.

In The Supreme Court of the United States

DAVID MIRANDA VARGAS, Petitioner

v.

STATE OF CALIFORNIA, Respondent

On Petition for Writ of Certiorari to the California Court of Appeal, Second Appellate District, Division Six

---

PETITION FOR WRIT OF CERTIORARI

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HOPP

QUESTIONS PRESENTED

1. Does the Fourth Amendment permit a law enforcement officer to detain the driver of a vehicle without any individualized suspicion, and who is not subject to parole or probation search terms, while he performs a routine probation search on a passenger of that same vehicle?

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PETITION

Petitioner David Miranda Vargas respectfully prays that a writ of certiorari issue to review the decision of the California Court of Appeal, Second Appellate District, Division Six, affirming his conviction and the denial of his motion to suppress evidence pursuant to the Fourth Amendment to the United States Constitution.

LIST OF PARTIES

The parties are as they appear in the caption.

OPINION BELOW

The Order Modifying Opinion and Opinion of the California Court of Appeal, Second Appellate District, Division Six, are not published. A copy is attached as Appendix B. The California Supreme Court's order denying review on June 19, 2002 is attached as Appendix A. The order denying Petitioner's Motion to Suppress of the Superior Court of the State of California, County of

Ventura, is attached as Appendix C.

JURISDICTION

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. section 1257(a). The California Court of Appeal, Second District, Division Six, filed its opinion on April 2, 2002, and its Modified Opinion April 29, 2002. The California Supreme Court filed its order denying review on June 19, 2002.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Fourth Amendment:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and

particularly describing the place to be search, and the persons or things to be seized.

STATE STATUTES INVOLVED

California Penal Code section 1538.5, subdivision (a)(1)(A):

> (a) (1) A defendant may move for the return of property or to suppress as evidence any tangible or intangible thing obtained as a result of a search or seizure on either of the following grounds:
>
> (A) The search or seizure without a warrant was unreasonable....

STATEMENT OF THE CASE

Vargas was charged on December 11, 2000 with possession of heroin, a felony, in violation of Health & Safety Code Section 11350 subdivision (a), under the influence of a controlled substance,

a misdemeanor in violation of Health & Safety Code Section 11550 subdivision (a). Clerk's Transcript "CT," 19-20.

At the preliminary hearing, Vargas moved to suppress evidence on the grounds it was secured in violation of the Fourth Amendment. CT 1-15. Specifically, he claimed his detention lacked reasonable suspicion and was unreasonably prolonged, and that the evidence acquired as a result of the detention must be suppressed. CT 29.

Vargas's counsel did not renew the motion before Vargas entered a guilty plea on January 2, 2001, as required by California law to preserve the issue for appeal. CT 21; Reporter's Transcript "RT" 1-4. Vargas was placed on probation, and filed a timely Notice of Appeal. RT 6-8, 39-40.

HOW THE FEDERAL QUESTION WAS PRESENTED BELOW

Vargas moved the trial court to suppress evidence pursuant to the Fourth Amendment of the Federal Constitution, according to the procedure provided for by state law in California Penal Code section 1538.5. *Clerk's Transcript*, 1-32.

In ruling on Vargas's motion to suppress, the trial court received testimony from Oxnard Police Officer Woodruff, who detained Vargas and performed the search. RT 5-24. When the trial court denied his motion, Vargas pled guilty to possession of a controlled substance. CT 21; RT 1-4.

On appeal, Vargas raised the suppression issue in conjunction with a claim of ineffective assistance of counsel. The Court of Appeal decided the suppression issue on its merits. Appendix B-1 through Appendix B-12.

REASONS FOR GRANTING THE WRIT

The California Court of Appeal, Second District, Division Six has incorrectly decided an important question of federal law that should be resolved by this Court. Specifically, the California Court of Appeal has concluded that a law enforcement officer may detain a driver during a routine traffic stop while he performs a routine, suspicionless probation search on the driver's passenger, and that the officer may then use information acquired during the probation search to further detain the driver.

The issue in this case is one not resolved in *United States v. Knights*, 534 U.S. 112, 122 S.Ct. 587, 592-593 fn. 6 (2001): whether detention of a driver while his passenger is subject to a suspicionless probation search pursuant to probation terms violates the reasonableness requirement of the Fourth Amendment.

The California Supreme Court was provided the opportunity to review petitioner's Fourth Amendment challenge to his conviction, and declined to do so.

Because the California courts continue to disregard basic Fourth Amendment protections, petitioner respectfully requests that this Court consider the issue in his case.

I. VARGAS WAS DEPRIVED OF THE EFFECTIVE ASSISTANCE OF COUNSEL IF TRIAL COUNSEL WAIVED THE SUPPRESSION ISSUE BY NOT RENEWING VARGAS'S MOTION.

Assuming trial counsel waived the suppression issue on appeal by failing to renew Vargas's

motion before entering a plea, trial counsel necessarily provided ineffective assistance. In *People v. Hart,* 74 Cal.App.4th 479 (1999), upon which the court in *People v. Hoffman,* 88 Cal.App.4th 1 (2001) relied, the merit of a suppression issue not preserved by renewal before entry of a plea was addressed under *Strickland v. Washington*, 466 U.S. 668, 686 (1984). *People v. Hart, supra,* 74 Cal.App.4th at 487; *see also People v. Miranda*, 44 Cal.3d 57, 80-81 (1987). Here, Vargas's Fourth Amendment challenge should be heard under the *Strickland* standard.

Vargas holds the burden of proving ineffective assistance, and he must demonstrate that his counsel's representation "was deficient in falling below an objective standard of reasonableness under prevailing professional norms." *Strickland v. Washington, supra,* 466 U.S. 668, 684-685. He must also establish a reasonable probability that the outcome would have been different had counsel not provided ineffective assistance. A reasonable probability "is a probability sufficient to undermine confidence in the outcome." (*Strickland, supra,* 466 U.S. at 694.)

A reasonably competent attorney is expected to pursue meritorious legal issues and preserve them for appeal. *See, e.g., People v. Jackson*, 187 Cal.App.3d 499, 506 (1986). Here, counsel should have renewed the motion to suppress evidence to preserve the issue on appeal. Counsel's failure to renew the motion to suppress cannot be explained by a tactical decision, since the motion would have been made outside the presence of the jury, and there was no benefit to not bringing such a motion. *People v. Fosselman,* 33 Cal.3d 572, 581 (1983); *In re Hall,* 30 Cal.3d 408 (1981). Moreover, if counsel's failure to reassert the suppression issue before appellant entered his plea caused that issue to be waived on appeal, the error was clearly prejudicial. *See, e.g., People v. Hart, supra,* 74 Cal.App.4th 479; *Strickland v. Washington, supra,* 466 U.S. 668, 684-685.

II. OFFICER WOODRUFF UNREASONABLY AND UNLAWFULLY DELAYED VARGAS'S DETENTION WHILE PERFORMING WARRANT CHECKS AND A PROBATION SEARCH OF THE PASSENGERS.

An officer may make an investigatory stop of a vehicle when he or she has reasonable suspicion, based on specific and articulable facts, that the driver or passenger has been involved in a crime. *United States v. Hensley,* 469 U.S. 221, 226 (1985); *People v. Williams,* 33 Cal.App.4th 467 (1995). A traffic stop is justified at its inception "if based on at least reasonable suspicion that the driver has violated the Vehicle Code or some other law." *People v. Bell,* 43 Cal.App.3d 754, 761 (1996).

An investigatory stop becomes unlawful, however, if it exceeds the time necessary to complete the investigation for which the stop is made. *Florida v. Royer,* 460 U.S. 491, 500 (1983); *People v. Glaser,* 11 Cal. 4th 354 (1995). An investigatory traffic stop may not include activities beyond the original purpose of the stop if those activities prolong the stop beyond the time it would otherwise have taken. *United States v. Shabazz,* 993

F.2d 431, 435-437 (5th Cir. 1993); *People v. Bell, supra,* 43 Cal.App.4th at 767 Such an unlawful prolonged detention is precisely what occurred here.

The California Supreme Court's interpretation of the Fourth Amendment in *People v. McGaughran* , 25 Cal.3d 577 (1979) demonstrates that the length of the detention here was wholly unreasonable. In that case, the Court reversed the conviction of a driver who was unlawfully detained for a warrant check after the driver's traffic violation was investigated and resolved. A search conducted incident to the detention resulted in evidence leading to defendant's conviction for burglary. *Id.* at 581. The Court found the conviction violated the Fourth Amendment because it was based on evidence obtained during an illegal search and seizure. *Id.*

The Court explained that a defendant is not immunized from prosecution on an already-pending charge (the subject of a warrant) even when the warrant is discovered by an unlawful traffic-related detention:

> ...[T]his is not a case in which an unlawful detention led merely to the

> discovery of an outstanding warrant and the defendant's arrest thereon. In that event the legality is not a bar to prosecution on the pending charge, for a defendant is not immunized from criminal liability simply because he was arrested on a warrant that had been improperly issued or executed. *People v. McGaughran, supra,* 25 Cal.3d at 583, citing *Willett v. Superior Court,* 2 Cal.App.3d 555, 559 (1969).

In that case, however, defendant had been stopped lawfully for a traffic violation pursuant to a "*Terry* stop" as defined by the Fourth Amendment. *Id.* at 582, distinguishing *In re Tony C., supra,* 21 Cal.3d 888.

Pursuant to the lawful stop, the officer in *McGaughran* initially detained defendant for three or four minutes to check defendant's and his passenger's identification, to discuss the violation, and to warn defendant rather than issue a citation. *Id.* at 585 [factually distinguished in *People v. Kraft,* 23 Cal.App.4th 978 (2002)]. Instead of

releasing defendant and his passenger immediately thereafter, however, the officer "returned to his patrol car and detained them for an additional period [of about ten minutes] while he placed a call on police radio to inquire whether there were outstanding warrants in either name...." *Id.* at 586. The additional detention was unlawful, and transformed a valid investigatory stop into an unreasonable warrant check:

> All that was 'reasonably necessary' to deal with the offense...was for Officer Thomas to examine defendant's license and registration, explain the violation, and then issue either a citation or a warning. The additional period of detention for the purpose of seeking out unrelated arrest warrants in the name of defendant or his passenger was not 'reasonably necessary' to that process, and hence 'exceeded constitutional limitations' under the foregoing rule. *Id.* at 587.

Thus although the suspected traffic violation in *McGaughran* warranted a temporary detention, the subsequent warrant check after the

driver was cleared of traffic violations was not necessary to investigate the circumstances that justified the stop in the first instance. The warrant check therefore unreasonably prolonged the investigation.

It is the *duration* of the stop that remains critical in determining whether a traffic stop has been unreasonably prolonged. If officers ask questions unrelated to the purpose of the traffic stop while waiting for the results of a warrant check on a driver that was related to the purpose of the stop, the detention is not thereby rendered unlawful. *United States v. Walker* (10th Cir.1991) 933 F.2d 812, 814-816; *People v. Bell, supra,* 43 Cal.App.4th at 767. But if an officer engages in inquiries, searches, questioning, or investigation beyond the initial purpose of the stop, and thereby prolongs the stop, the detention becomes unlawful. *People v. Bell, supra,* 43 Cal.App.4th at 767.

Here, although Officer Woodruff initially had reasonable suspicion to stop Vargas's car and question him regarding a possible traffic violation, the officer substantially overstepped the bounds of reasonableness in prolonging his investigation with matters unnecessary to the

investigation of the suspected traffic violation. The traffic stop, which commenced at 1:48 p.m., was initially justified on the ground that appellant was traveling 5 miles per hour over the posted limited, and that he had swerved within the confines of the number one lane. (RT 6.) Although the facts supporting reasonable suspicion were not overwhelming, appellant agrees that they justified the initial stop.

Thereafter, however, Officer Woodruff only briefly contacted appellant and his passengers, long enough to obtain their identification and request warrant and probation checks. Rather than question appellant further to resolve the suspected traffic violation, Officer Woodruff instead delayed the detention for at least 10 minutes, and possibly as long as 20 minutes, from shortly after 1:48 p.m. until between 2:05 p.m. and 2:10 p.m. During that time he conducted a probation search of the rear passenger, arrested the rear passenger, and ordered the front passenger out of the car to sit on the curb. (RT 7-8, 23.)

The probation search of Vargas's rear passenger was wholly unnecessary to the investigation of a traffic stop, as was the delay caused by

Officer Woodruff's contact with the front passenger. Moreover, it was the evidence obtained from the rear passenger that lead Officer Woodruff to question Vargas further about possible drug use.

Under the circumstances as they unfolded here, the officer did not "pursue[] a means of investigation reasonably designed to confirm or dispel their suspicions quickly." *United States v. Sharpe,* 470 U.S. 657, 686-688 (1985). Instead, the officer began an unrelated, routine, probation search of a passenger while Vargas remained detained for a traffic violation.

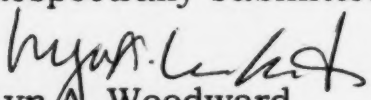
It has repeatedly been said that the touchstone of the Fourth Amendment is reasonableness. *Florida v. Jimeno,* 500 U.S. 248, 250 (1991). An officer's decision to conduct probation searches of passengers simply because those passengers are on probation, while detaining the driver for a suspected traffic violation without further inquiry, is intrinsically unreasonable and prolongs the stop unnecessarily for reasons unrelated to the purpose of the original traffic stop. Therefore, the detention is unlawful.

III. CONCLUSION.

For the reasons set forth herein, Vargas respectfully requests that this Court accept review of his case, and that it reverse the decision of the California Court of Appeal.

DATED: September 16th, 2002

Respectfully submitted,



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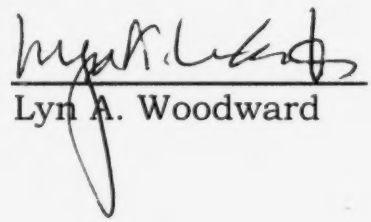
Attorney for Petitioner

CERTIFICATE OF COMPLIANCE

This original brief is presented in proportionately-spaced12 point Roman typeface (Bookman Oldstyle). The lines are spaced at least 2 points from one another. There are no footnotes. Quotes greater than 50 words in length are indented.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 16th day of September 2002, at Pacific Grove, California.



Lyn A. Woodward

Court of Appeal, Second Appellate District,
Division Six-No. B148478

S106751

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

THE PEOPLE, Plaintiff and Respondent

v.

DAVID MIRANDA VARGAS, Defendant and Appellant

SUPREME COURT
FILED
JUN 19 2002
Frederick K. Ohlirich Clerk
Deputy

Petition for Review DENIED.
Kennard, J., was absent and did not participate.

NOT TO BE PUBLISHED

In the Court of Appeal of the State of California

Second Appellate District

Division Six

THE PEOPLE Plaintiff and Respondent, v. DAVID MIRANDA VARGAS, Defendant and Appellant	2d Crim. No. B148478 (Super. Ct. No. 2000105667 (Ventura County) ORDER MODIFYING OPINION AND DENYING REHEARING [NO CHANGE IN JUDGMENT]

COURT OF APPEAL-SECOND DIST.

FILED

APR 29 - 2002

JOSEPH A. LANE, Clerk

Deputy Clerk

THE COURT:

It is ordered that the opinion filed herein on April 2, 2002, be modified as follows:

1. On page 1, the fourth and fifth lines of the first full paragraph, the words "for the first time in his reply brief" are deleted.

2. On page 3, the first full paragraph under the heading"ineffective Assistance of Counsel," beginning "Appellant alternatively argues," is deleted and replaced with the following:

"In a supplemental opening brief, appellant alternatively argues that his trial counsel rendered constitutionally ineffective assistance of counsel by failing to preserve the supression motion for appellate review. We disagree."

There is no change in the judgment.

Appellant's petition for rehearing is denied.

APPENDIX B-2

NOT TO BE PUBLISHED

In the Court of Appeal of the State of California
Second Appellate District
Division Six

THE PEOPLE Plaintiff and Respondent, v. DAVID MIRANDA VARGAS, Defendant and Appellant	2d Crim. No. B148478 (Super. Ct. No. 2000105667 (Ventura County)

COURT OF APPEAL-SECOND DIST.
FILED
APR 2, 2002
JOSEPH A. LANE, Clerk
Deputy Clerk

David Miranda Vargas appeals from the judgment following his guilty plea to possession of heroin (Health & Saf. Code, Statute 11350, subd. (a)). Appellant was granted probation. Appellant contends that the trial court erred in denying his motion to suppress evidence pursuant to Penal Code section 1538.5, and alternatively contends for the first time in his reply brief that his trial counsel provided constitutionally ineffective assistance by failing to preserve the suppression motion for appellate review. We affirm.

Oxnard Police Officer Charles Woodruff stopped appellant's car because he was driving 50 miles an hour in a 45 miles per hour zone and was swerving. Two passengers were in the car with appellant. Woodruff took appellant's driver's license, registration and insurance information, and also asked appellant and his passengers if they were on probation. All three responded that they were probation for drug offenses. Woodruff then spent about three minutes running record checks on appellant and his passengers, which revealed that both passengers were on probation but that appellant was not.

Woodruff conducted a search of the rear passenger, Salvadore Bustamonte, pursuant to the terms of his probation and found a syringe in his pocket. Bustamonte told Woodruff that he had found the syringe on the floor of the car and that it belonged to appellant. Woodruff placed Bustamonte under arrest for possession of the syringe, and directed the other passenger to exit the car and sit on the curb. Woodruff then directed appellant to get out of the car and asked him about the syringe. Appellant responded that

he was diabetic and used syringes to inject insulin, but denied that he had left any syringes in the car. As appellant was speaking, Woodruff noticed that his voice was "raspy and roungh" and that he was "slightly hunched over forward." Woodruff also noticed needle marks on appellant's arm.

Appellant subsequently pulled up his sleeves to show Woodruff where he injected his insulin, revealing an abscess on his arm. Woodruff knew from experience that abscesses are common among heroin users. Woodruff checked appellant's pulse, which was approximately 140 beats per minute, and observed that his pupils were constricted. All of these observations led Woodruff to believe that appellant was under the influence of a controlled substance, so he placed him under arrest.

A search of appellant's wallet incident to his arrest revealed bindles containing .59 grams of heroin. Appellant subsequently waived his Miranda rights and admitted that the bindles belonged to him and that he had been using heroin on a daily basis.

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1 Appellant's charge for a violation of Health and Safety Code section 11550, subdivision 9a) was dismissed pursuant to a plea agreement

2 *Miranda v. Arizona* (1966) 384 U.S. 436

DISCUSSION 3

Waiver Of The Right To Appeal

Appellant brought a motion to suppress evidence pursuant to Penal Code section 1538.5 at his preliminary hearing, which was denied. While he now seeks review of that ruling, he has waived his right to appeal by failing to renew the motion in the trial court. (*People v. Lilienthal* (1978) 22 Cal.3d 891, 896; *People v. Hoffman* (2201) 88 Cal. App.4th 1, 3; *People v. Hart* (1991) 74 Cal.App.4th 479, 485-486.)

People v. Callahan (1997) 54 Cal. App.4th 1419, cited by appellant, is inapposite. The court in that case merely recognized that a suppression motion need not be renewed in the superior court in order to preserve appellate review where the ruling on the motion, the taking of the plea, and the imposition of judgment all occurred within the municipal court. (*Id.* At. P. 1428.) While appellant correctly notes that all three of those events occurred in the same court here as a result of court unification, the California Constitution expressly provides that unification does not abrogate the requirement that a suppression motion be renewed before a different superior court judge in order to preserve the right to appeal. (Cal. Const., art. VI, section 23, subd. (c); *People v. Hoffman* (2201) 88 Cal. App.4th at p. 3.)

Appellant alternatively argues for the first time in his reply brief that trial counsel rendered ineffective assistance by failing to preserve the suppression motion for appellate review. Appellant has waived this argument by failing to raise it in his opening brief. (See *People v. Peevy* (1998) 17 Cal.4th 1184, 1206.) In any event, the argument lacks merit.

Appellant has the burden of proving ineffective assistance of counsel. (*People v. Babbitt* (1988) 45 Cal.3d 660, 707.) To meet this burden, he must establish both deficient performance and prejudice. (*Strickland v. Washington* (1984) 466 U.S. 668, 687.) In determining whether counsel was deficient, we measure counsel's performance "against the standard of a reasonably competent attorney." (*People v. Kipp* (1998) 18 Cal.4th 349, 366.) To establish prejudice, "[t]he defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." (*Strickland, supra*, at p. 694.)

If appellant's search was unlawful, then counsel's failure to preserve the issue would have constituted deficient performance. (*People v. Hart, supra,* 74 Cal.App.4th at pp. 485-486.) This deficiency would have

prejudiced appellant because the heroin he pled guilty to possessing would have been suppressed had the issue been preserved. "Hence, to determine whether counsel was constitutionally ineffective for failing to preserve the issue, we must consider the merits of the Fourth Amendment argument." (*Id.* at p. 487.)

Appellant claims that his arrest and search were the fruit of an unduly prolonged detention. Specifically, appellant contends that Woodruff exceeded the permissible scope and duration of the traffic stop in violation of the Fourth Amendment by (1) questioning appellant and his passengers regarding their probation status; (2) conducting a records check; and (3) conducting a probation search of Bustamonte. We address these contentions in turn, and reject each of them.

First, Woodruff did not violate the Fourth Amendment by simply inquiring into the probation status of appellant and his passengers. "Questioning during the routine traffic stop on a subject unrelated to the purpose of the stop is not itself a Fourth Amendment violation.... While the traffic detainee is under no obligation to answer unrelated questions, the Constitution does not prohibit law enforcement officers from asking." (*People v. Brown* (1998) 62 Cal. App.4th 493, 499.)

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3 Appellant also claimed below that Woodruff lacked reasonable suspicion to conduct the traffic stop, but has conceded that point on appeal.

Appellant correctly notes that questions unrelated to the original purpose of the stop are only permissible as long as they do not prolong the detention beyond the time that it would otherwise take (*People v. McGaughran* (1979) 25 Cal.3d 577, 584; *People v. Bell* (19960 43 Cal.App.4th 754, 767-768), but Woodruff's brief inquiry about probation status as part of his generalized questioning did not appreciably prolong the stop. "One minute of generalized questioning during a routine traffic stop is not unreasonable." (*Brown, supra*, at p. 499.)

Second, a records check of the driver and any passengers can be conducted during a routine traffic stop consistent with the Fourth Amendment where "it would not add to the delay already lawfully experienced by the offender as a result of his violation..." (*People v. McGaughran, supra,* 25 Cal.3d at p. 584, fn. Omitted.) There is no indication here that the records check conducted by Woodruff, which took about three minutes, added to the delay already occasioned by appellant's traffic violation. (See *People v. Stoffle* (1991) 1 Cal.App.4th 1671, 1679 [three-to-four minute detention to run warrant check while checking license and registration was not unreasonable under *McGaughran*].) In any event, it was not objectlively reasonable for Woodruff to seek verification of appellant's representation that he was on probation, which if true would have given Woodruff

authority to search appellant without cause. (*People v. Bravo* (1987) 43 Cal.3d 600, 607-609; *People v. Woods* (1999) 21 Cal.4th 668, 675; see also *Florida v. Jiminez* (1991) 500 U.S. 248, 250 ["The touchstone of the Fourth Amendment is reasonableness."].)

Third, appellant's detention was not unduly prolonged by virtue of Bustamonte's probation search. Woodruff learned in the course of his investigation that Bustamonte was on probation, sop he was justified in prolonging the detention for the period of time necessary to search him. Circume stances developing during a routine traffic stop may provide grounds to prolong the detention. (People v. Russell (2000) 81 Cal.App.4th 96, 102.) While appellant correctly notes that Woodruff's verification of Bustamonte's probation status did not give rise to reasonable suspicion of criminal activity (compare, e.g., ibid), Woodruff did not need reasonable suspicion to search Bustamonte once he knew he was on probation (*People v. Bravo, supra,*43 Cal.3d at p. 607-609; *People v. Woods, supra,* 21 Cal.4th at p. 675.) Any inconvenience to appellant in waiting while Woodruff conducted the search was minimal when balanced against the government's interest in ensuring that Bustamonte was complying with the terms of his probation. (See *Woods, supra*, at p. 675 [recognizing "dual purpose" of probation search condition "to deter further

offenses by the probationer and to ascertain compliance with the terms of probation"]; *Bravo, supra*, at p. 10 [same].) There is nothing in the record indicating that the probation search at issue here was arbitrary, capricious, or harassing (see *In re Tyrell J.* (1994) Cal.4th 68, 87 & fn. 5),and appellant could not reasonably expect that Bustamonte would be somehow immune from his probation search terms while traveling as a passenger in appellant's car.

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4 We reject the People's suggestion that appellant was free to leave while Woodruff searched Bustamonte. Aside from the lack of any evidence in the record that Woodruff had returned appellant's identification or registration, a reasonable person in appellant's position would have believed that he was not free to leave until the officer affirmatively indicated otherwise. The cases cited by the People for the proposition that law enforcement need not tell an individual that he or she is free to terminate a consensual encounter (I.N.S. v. Delgado (1984) 466 U.S. 210, 217; People v. Bennett (1998) 68 Cal. App.4th 396, 402) are inapposite because appellant's traffic stop was, by definition, nonconsensual.

Since appellant's detention and subsequent search were legal, trial counsel was not constitutionally ineffective for failing to renew the motion to suppress. (People v. Hart, supra, 74 Cal.App.4th at p. 493.)

The judgment is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

YEGAN, Acting P.J.

COFFEE, J.

Superior Court of the State of California, County of Ventura

MINUTE ORDER REPORT

Case Number 2000105667 F A

People v. Vargas, David Miranda

Violations

Cnt	S/A	Off Lvl	Plea	Dt.Plea	Dispostion	Dt.Dispo	Bail Amt
1	F	11350(a) HS	Not guilty	11/07/00			$10,000
	11/04/00 Possession of a Controlled Substance						
2	M	11550(a) HS	Not guilty	11/07/00			$5,000
	11/04/00 Under Unfluence of a Controlled Substance						

Fiscal Component	Due	Balance
Fines/PA	$.00	$.00
Case Total:	$.00	$.00

Docket Dt.	Seq.	Code	Text
11/27/2000	1	HHELD	Preliminary Hearing Re-Set Heard in Courtoon 11 on Nov 27, 2000 at 09:00 AM.
	2	OFJUD	Judge Guttierez, Arturo F.
	3.	OFJA	Judicial Assistant - Nunez, Patricia A,
	4	OFREP	Court Reporter -Sullivan, Vicki E is present
	5.	PP	The defendant is present in court.

APPENDIX C-1

6 PPDA	Deputy District Attprney D. GASKELL is present.
7 PPD	Public Defender M. WOLTER is present in court
8 TRAS	This case is assigned to Courtroom 26
9 CLASG	Case assigned to Courtroom 26 for PRELIMINARY EXAMINATION to begin 11/27/00 at 09:00 AM.
11 BLCUR	Defendant remanded to cusotdy of Sheriff in lieu of bail in the amount of $35,000.00.
12 JLT	The Sheriff is ordered to tranport the defendant to COURTROOM 26
13 HHELD	PRELIMINARY EXAM-INATION Heard in Court room 26 on Nov 27, 2000 at 09:00 AM
14 OFJUD	Judge Henson, Burt.
15 OFJA	Juducial Assistant - Lagana, Martha M.
16 OFREP	Court Reporter - Mont-gomery, Christie L is present.
17 PP	The defendant is present in court.

APPENDIX C-2

18 PPDA	Deputy District Attorney D. GASKELL is present.
19 PPD	Public Defender Martha Wolter is present in court.
20 TRTIM	At 03:15 PM
21 PTPE	The Preliminary Hearing Com mences
22 MOCM1	The court is in session, all the parties are present, the 1538.5 PC motion commences
23 FCSTIP	The parties stipulate: no warrants
24 FCSTIP1	For purposes purposes of the pre liminary hearing only, the parties stipulate to the following: The substance seized and booked into evidence was analyzed by a quali-fied forensic scientist with the Ventura County Crime Lab and that if called to testify he would testify that the substance was found to contain .59 grams of heroin.
25 TRPEOP	For the People
26 TRWIT	People witness Charles Woodruff is sworn and testifies
27 TRREST	People rests.
28 TRREST	Defense rests.
29 TRARGU	Argument by the Defense.
30 TRCON	The matter before the court is contested

APPENDIX C-3

Superior Court of the State of California, County of Ventura

MINUTE ORDER REPORT

Case Number 2000105667 F A

People v. Vargas, David Miranda

31TRARGU	Argument by the People.
32 PTHTA	The defendant is held to answer to Superior Court on 12/11/00 at 1:30 PM in Courtroom 11 for arraign ment on an information.
33 PTHTAF	The court orders that Complaint and Order Holding The Defendant to Answer. After Preliminary Hearing, be filed.
34 BLOTA	The court orders you to appear.
35 BLCUR	Defendant remanded to cusotdy of Sheriff in lieu of bail in the amount of $35,000.00.

APPENDIX C-4